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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/781,752	02/12/2001	Earl T. Crouch	3000-41	8908

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EXAMINER

SINGH, ARTI R

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 08/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/781,752

Applicant(s)

CROUCH ET AL.

Examiner

Ms. Arti Singh

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on amendment filed on 06/30/2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 February 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-949) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

1. The Examiner has carefully considered Applicant's amendments and accompanying remarks filed on June 30, 2003. Applicant's amendments to claims 1 and 4; amendment to page 2 of the specification and the Terminal Disclaimer over USPN 5,763,330 have all been entered. The objection made in the first bullet of Paragraph 1 of the previous office action is now withdrawn in light of the amendment made to page 2 of the specification. However, the objection made in the second bullet has not been overcome. It appears that Applicant intended to rectify this by converting "#" to "lbs" which is shown in the marked up version, but it seems that the same was not transferred to the clean copy version, and is thus maintained. The objection made in paragraph 2 of the previous office action is also withdrawn, as it has been found that the continuity data is only required to be in the first paragraph of the disclosure and not necessarily be present in the oath, and is thus withdrawn. The rejection made in paragraphs 3 & 4 of the previous office action are maintained as it appears that Applicant inadvertently has not informed the PTO as to what the metes and bounds of "excess" actually is, and is therefore restated below. The rejection made in paragraph 5 of the previous office action is withdrawn in light of the amendment made to claims 1 and 4. The rejection made in paragraphs 6 & 7 are also withdrawn in light of the Terminal Disclaimer that was concurrently filed. The rejections made in paragraphs 9-11 are also maintained. Despite these advances, the amendments are not found to patentably distinguish the claims over the prior art and do not overcome the rejection made under 35 USC 112-2<sup>nd</sup> (paragraphs 3 & 4) and 102/103 (paragraph 9-11), and are thus maintained. Applicant's arguments are not found to be persuasive in terms of patentability and the actions is as follows:

***Claim Rejections - 35 USC § 112(restated and maintained)***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Independent claims 1 and 4 recite the limitation, "that the coated fabrics have a tear strength when tested according to ASTM D 1682 in "excess" of that achieved by conventional solvent coated fabrics". What exactly are the meets and bounds of something that is "excess"? Please provide endpoints or numerical clarification as to what determines the comparison. Further, although not required, it is a suggestion of the Examiner that Applicant submit a copy of the ASTM D 1682 standard so that the file is complete. Claims 2, 3 and 5-12 are objected to as being dependent upon a rejected base claims 1 and 4.

***Claim Rejections - 35 USC § 102/103(restated and maintained)***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 2, 4 and 11 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kitamura et al. (USPN 5,336,538) or Sakairi et al. (USPN 3,892,425) or Rodenbach et al. (USPN 3,807,754).

Kitamura et al. disclose an airbag comprising a woven fabric (1) and a polymer covering layer (2) (column 2, lines 45-60). A variety of fibers may be employed in making the woven fabric used by patentee, some of them being; fibers of polyester, polyamide and polyolefin (column 4, lines 40-48). The polymer covering layer (2) may be produced from a polyurethane resin, polyester resin, polyamide resin, or a polyolefin resin, which are only a few of the many listed in column 4, line 56- column 5, line 9.

Sakairi et al. are concerned with the fabrication of an airbag material derived from a knitted fabric; wherein the fabric is coated with an elastomeric coating. Suitable fibrous materials include nylon and polyester. The instant patent exemplifies polyurethane and chlorosulfonated polyethylene as suitable elastomeric coatings.

Rodenbach et al. teach a passive restraint system composite comprising a coated fabric. Suitable fabrics include nylon and polyester, and suitable coating materials include neoprene and urethanes (column 4, lines 6-8 and 52-56). Thus, Applicant's claims 1, 2, 4, 5 and 11 are clearly anticipated if not obvious of the cited references.

Given that the aforesaid references meet each and every chemical and structural requirement set forth in the claims, then it must meet the property limitations of tenacity and tear strength recited that depend from said requirements. In other words, it is reasonable to presume that the invention of Kitamura et al. or Sakairi et al. or Rodenbach et al. would inherently anticipate the physical properties of the present invention, since both inventions are comprised of woven fabrics coated with an elastomeric composition wherein said fabric may be a woven polyamide, polyester or polypropylene.

Since no other structural or chemical features are claimed which may distinguish the present invention from that of Kitamura et al. or Sakairi et al. or Rodenbach et al. inventions, the presently claimed physical properties of tenacity and tear strength are deemed to be inherent to the inventions of Kitamura et al. or Sakairi et al. or Rodenbach et al. The burden is upon Applicant to prove otherwise. Note *In re Fitzgerald* 205 USPQ 495. Without a showing that evidences a difference between the prior art and the present invention, anticipation is proper.

7. Claims 3, 5-10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kitamura et al. or Sakairi et al. or Rodenbach et al. as applied to claims 1, 2, 4 and 11 above, and further in view of Mohammed et al. (USPN 5,507,900). Kitamura et al. or Sakairi et al. or Rodenbach et al. teach what is set forth above but fail to disclose a tie layer. Mohammed et al. teach a method of making a polymer and fabric sheet composite by using a tie layer for bonding the polymer sheet and the fabric together (column 5, lines 39-42). Suitable tie layer resins include acrylic polymer and vinyl acetate copolymers (column 5, line 37 to column 6, line 15). Accordingly, it would have been obvious to a person having skilled in composite art the time the invention was made to have employed the tie layer as taught by Mohammed et al. in any one of the composites of Kitamura et al. or Sakairi et al. or Rodenbach et al., motivated by the reasoned expectation of providing a composite in which the chemically incompatible layers are adhered to one another by means of an adhesive/tie layer.

#### ***Response to Arguments***

8. Applicant's arguments filed June 30, 2003 have been fully considered but they are not persuasive. Applicant traverses the rejection over claims 1, 2, 4 and 11 under 35 U.S.C. § 102 (b) as anticipated by or in the alternative, under 35 U.S.C. § 103 (a) as obvious over Kitamura, or Sakari or Rodenbach et al. in addition claims 3, 5, 10 and 12 under 35 U.S.C. § 103 (a) as

obvious over Kitamura, or Sakari or Rodenbach et al. further in view of Mohammed et al. It should be noted that, Applicant's response states that they have submitted a declaration filed under 37 CFR 1.132. This has yet to be received. The Examiner has made a copy of the declaration that was found in the parent Application (08/536167) and is relying upon it. It is also being remitted to verify that both Applicant and Examiner are discussing the same declaration. Applicant's only traversal cited in the response asserts that the affidavit illustrates the superiority of Applicant's invention and includes comparative experiments along the lines of the ASTM tests shown in the specification. In response to this the Examiner contends that firstly, the present invention as currently claimed may be coated with a plethora of thermoplastic material which each in their own right have different chemical and physical properties from one another, how is the comparison valid? Which fibers were chosen with which coating? Applicant is not comparing apples to apples, and thus the recited claims are not commensurate in scope with the comparative showing of record.

Furthermore, it is the Examiner's position that airbag of Kitamura, or Sakari or Rodenbach et al. is identical to or slightly different than the airbag of Applicant, because both airbags are comprised of the same fabric, made from the same types of yarns and then further coated with the same thermoplastic materials. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production, if the product in the product-by-process claim is the same or obvious from a product of the prior art, the claim is unpatentable even though the prior art product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden is shifted to Applicant to show unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289,292 (Fed. Cir. 1983). The Kitamura, or Sakari or

Rodenbach et al. references either anticipated or strongly suggested the claimed subject matter. It is noted that if Applicant intends to rely on Examples in the specification or in a submitted Declaration to show non-obviousness, the Applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the Kitamura, or Sakari or Rodenbach et al. references. In a nutshell, extrusion coating a thermoplastic material onto a fabric is a methodical step that does not materially effect the final product, and a skilled artisan would not be able to tell the difference as how the coating got there, especially after all the post coating processing that occurs like the applications of heat and pressure.

Therefore, in lieu of the Examiner's rebuttal Applicant's arguments are not found to be unconvincing and the rejections set forth above are maintained and this action is made final.

#### *Conclusion*

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.



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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ms. Arti Singh whose telephone number is 703-305-0291. The examiner can normally be reached on M-F 8:00am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-873-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Ms. Arti Singh  
Patent Examiner  
Art Unit 1771

ars  
August 11, 2003